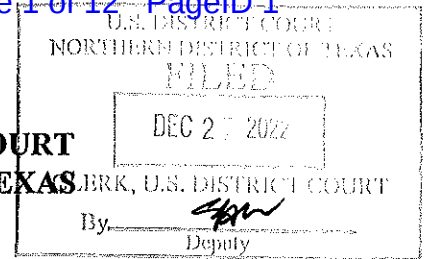


PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 08/2021)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS



Benny Pena Jr #0957603

Plaintiff's Name and ID Number

Tarrant Co. Jail

Place of Confinement

**4-22CV-1142-P**

CASE NO.

(Clerk will assign the number)

v.

DR. SHAW 100 N. Lamar St, Fort Worth, TX 76104

Defendant's Name and Address

Defendant's Name and Address

Defendant's Name and Address  
(DO NOT USE "ET AL.")

**INSTRUCTIONS - READ CAREFULLY**

**NOTICE:**

**Your complaint is subject to dismissal unless it conforms to these instructions and this form.**

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

### FILING FEE AND *IN FORMA PAUPERIS* (IFP)

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$52.00 for a total fee of \$402.00.

2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.

3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$52.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)

4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

### CHANGE OF ADDRESS

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "NOTICE TO THE COURT OF CHANGE OF ADDRESS" and shall not include any motion for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

#### I. PREVIOUS LAWSUITS:

A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? \_\_\_ YES ☒ NO

B. If your answer to "A" is "yes," describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: N/A

2. Parties to previous lawsuit:

Plaintiff(s) N/A

Defendant(s) N/A

3. Court: (If federal, name the district; if state, name the county.) N/A

4. Cause number: N/A

5. Name of judge to whom case was assigned: N/A

6. Disposition: (Was the case dismissed, appealed, still pending?) N/A

7. Approximate date of disposition: N/A

## V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

LACK of Timely Medical care, Medical Malpractice and deliberate indifference to Medical Need's.

See PAGE 2 AND 3

## VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Appointment of counsel for my case ~~of what~~ to determine what would be fair compensation

## VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.

Benny Pena, Benny Pena JR

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

CID# 0957603 of Texas

## VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? YES ☒ NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): N/A

2. Case number: N/A

3. Approximate date sanctions were imposed: N/A

4. Have the sanctions been lifted or otherwise satisfied? YES ☒ NO

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On 09/23/22 Friday

I Report to Dr. SHAW that the Tissue Expander IN my neck Swollen and Hot that it was causing pain. I Explained to him my Plastic Surgeon Said "If any Trauma or Infection accured to the area that I need to go to the Hospital / ER". The Dr. Shaw Respond to me saying it look OK if it get's worst they will call Medline. This took place at the Infirmary in side the Jail where there is camera's every where to recore. Even the Officer MG. Jackson who was working that Shift that day knew there was something worng with my neck that night. Around midnight of ~~Saturday~~ of 09/24/22 my neck started to have fluid coming out side of my neck I went to Tell the officer who got the nurse. The Nurse Said "It was the weekend and try to wait to I go see my plastic Surgeon on monday and try not to Squeez it" I try to tell him I'm in pain it was getting hard for me to Swallow and drink water, The nurse who I been trying to get his name from other nurse told me just to hold in there and gave me a band Aid.

3  
Pg 3  
3  
on 09/26/22 Monday  
I been called to a follow up to  
go see my Plastic Surgeon who is  
DR. STEVEN E. MAPULA who is also  
work at JPS/Plastic. When I got  
to his OFFICE, DR. MAPULA was upset  
he had ask me why I wasn't sent  
to the HOSPITAL when the INFECTION  
accured. I Told Him I try to Tell Them  
to send me to The HOSPITAL but they  
wouldn't listen to me. DR. STEVEN E. MAPULA  
had to call up to the Tarrant county Jail  
to ask why His Patient is being Neglected.  
After he got off the phone with the  
Tarrant county Jail He Told The officer  
to send me to the ER/HOSPITAL where  
They hook up IV'S and antiabiotics  
09/28/22 That when Dr. MAPULA Removed  
the TISSUE Expander.

AS They result Dr. Shaw cause the  
TISSUE Expander Premature

II. PLACE OF PRESENT CONFINEMENT: Tarrant County Jail 100 N. Lamar St.  
Fortworth, TX 76196

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted all steps of the institutional grievance procedure? ☒ YES ☐ NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Benny Pena JR  
100 N. Lamar St, Fort Worth, TX 76196

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Dr. Shaw, Medical Director at the Tarrant  
County Jail, John Peter Smith Hospital, 100 N. Lamar St  
Fort Worth TX 76196

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

He misdiagnosed the stage of infection w/ no differe  
nces

Defendant #2: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #3: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #4: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.



## ***Tarrant County Sheriff's Office***

### ***Grievance Response Form***

<u>G230710</u>	<u>10/18/2022</u>	<u>GILBERT</u>	<u>11/9/2022</u>	<u>19. MEDICAL GENERAL</u>
<i>Number</i>	<i>Received Date</i>	<i>Assigned To</i>	<i>Close Date</i>	<i>Classification</i>
<u>74 A</u>	<u>PENA, BENNY</u>		<u>0957603</u>	
<i>Housing</i>	<i>Name</i>		<i>CID</i>	

#### ***Grievance Response Summary***

MR. PENA, PER MEDICAL PERSONNEL, "ON 09/23/22, DR. SHAW EXAMINED HIS NECK, AT THE INSERTION SITE OF HIS TISSUE EXPANDER. HE NOTED THAT THERE WERE NO SIGNS OF AN INFECTION OR HEAT TO THE AREA. ON 09/24/22, AN INFIRMARY NURSE DOCUMENTED THAT CLEAR LIQUID WAS OBSERVED, "EVERY TIME HE SQUEEZED IT". THE NURSE CLEANED AND DRESSED THE SITE AND ENCOURAGED HIM TO REFRAIN FROM SQUEEZING THE AREA. NO FURTHER DOCUMENTATION WAS AVAILABLE. HIS GRIEVANCE AGAINST THE NURSING STAFF HAS BEEN FORWARDED TO NURSING SUPERVISION FOR AN INVESTIGATION.

ON 09/28/22, HIS EXPANDER WAS REMOVED. ON 10/17/22, AT HIS FOLLOW-UP APPOINTMENT, HIS INCISION SITE WAS DOCUMENTED AS "HEALING WELL".

RESPECTFULLY,

S. VANDERBILT, BSBM, LVN"...THANK YOU...

*"Grievance procedures are described in the Inmate Handbook. In the event you have lost or misplaced your Inmate Handbook, you may request a replacement from the housing officer."*

# TARRANT COUNTY JAIL INMATE GRIEVANCE FORM

File Nbr. 6230710

Press hard when writing

Name Benny Pena CID No. 0957603  
 Housing Assignment LE 74A Date 10/15/22  
 Is this an "American with Disabilities Act (ADA) Complaint?" Yes ☐ No ☐

State your problem as briefly as possible. Place in a "Grievance Envelope", seal and submit to Housing Officer. Keep pink (last) copy for your records.

Just want to make a report about a promble that happen on Sep 23-26, 2022. I reported to Dr. Shaw about an infection going on onto the surgical site where I got on my neck. "Noted this is a Specialy Surgical area" also Dr. Shaw inform me if any singe of it's gets worst, let the nurse know fast the nurse will keep an eye out" that night my skin pop fluid started to flow out my neck. I letted the nurse know what had happen, he said "he called someone they told him to put a bandaid on it" but I really needed medical help even the co' seen I needed help that night, the next night I end pain the same nurse told me "it's the weekend just wait" when I went to go see my Dr. who do my surgery, had to call up here and ask why I didn't get the help I needed he had to send me to the ER him self. also the nurse who I told didn't write or made a report so far what Dr. Shaw told me. In a result of all that 3 day period I got tissue Damage

**GRIEVANCE OFFICE USE ONLY\*\*\*\*\*DO NOT WRITE BELOW THIS LINE**

Grievance Officer [Signature] Date 10-17-2022 Code 19

Referred to \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Response by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

## GRIEVANCE SUMMARY RESPONSE

White Copy To File

Canary Copy To Inmate (Grievance Response)

Pink Copy For Inmate Retention



C. Has any court ever warned or notified you that sanctions could be imposed? \_\_\_\_\_ YES ☒ NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): N/A
2. Case number: N/A
3. Approximate date warning was issued: N/A

Executed on: 12/19/22  
DATE

Bennykins JR  
CID# 0957603  
(Signature of Plaintiff)

#### PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this 19 day of December, 20 22.  
(Day) (month) (year)

Bennykins JR  
CID# 0957603  
(Signature of Plaintiff)

**WARNING:** Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.

Instructions to a Prisoner *Pro Se* Plaintiff

Your suit \_\_\_\_\_ was filed on \_\_\_\_\_ and has been assigned case number \_\_\_\_\_.

These instructions do not include everything you need to know to pursue your case, but following them may help you avoid common mistakes that can result in delay or other consequences—including dismissal of your case.

1. **Filing Procedures** - The Local Civil Rules include the following requirements:

- You must submit a judge's copy (a paper copy) of any document you file. If you want a file-stamped copy returned to you, submit the original, the judge's copy, and an extra copy to be returned to you, and provide a self-addressed, postage-paid envelope. The clerk cannot make an extra copy for you unless you first pay a fee of 50 cents per page.
- You must type or legibly handwrite your documents on one side of numbered pages. Any exhibit or discovery material attached to the filing must be referred to in the filing. Any exhibit or discovery material not referred to in your filing or not attached to your filing may be returned to you.

2. **Address Change** - You must notify the Court if your address changes, or your case may be dismissed. Promptly file a written change of address notice in your case.

3. **Rules to Follow** - You must read and follow the Court's Local Civil Rules and the Federal Rules of Civil Procedure. Because the presiding judge is authorized to change how certain rules apply, you must read and follow the judge's orders in your case.

4. **Request for Attorney** - In a civil case, you generally are not entitled to a court-appointed attorney to represent you without cost to you. If you request a court-appointed attorney, a judge will decide whether to appoint an attorney depending on the circumstances of the case. Even if the court decides to appoint an attorney, the attorney cannot be forced to accept the appointment. You may call the Lawyer Referral Service of the State Bar of Texas at (800) 252-9690 for assistance in securing the services of a private attorney to represent you for a fee.

5. **Initial Case Review** - If the Court grants leave to proceed *in forma pauperis*, service of process will be withheld pending review of your complaint, and your complaint may be dismissed pursuant to 28 U.S.C. § 1915(e)(2).

6. **Copies to Defendant** - After a defendant has been served your complaint, you must serve a copy of any other document you file upon the defendant's attorney (or upon the defendant, if the defendant is *pro se*). You must serve the opposing side by mail or another manner authorized by FED. R. CIV. P. 5 (b)(2). All documents must contain a Certificate of Service reflecting that you served the opposing side. This is an example of language you may use:

- I hereby certify that on (Date), I forwarded a copy of the foregoing document to \_\_\_\_\_, the attorney for (Defendant) at the address of \_\_\_\_\_.

\_\_\_\_\_/Signature/

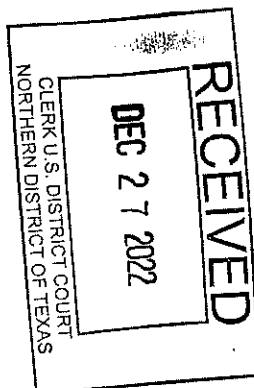
7. **Discovery Materials** - Do not file discovery materials with the clerk. If you file a motion to compel discovery, you may attach only the portions of discovery that are relevant to your motion.

8. **Questions About Your Case** - Do not write letters to the judge asking questions about your case - all communication with the judge should be through filings. Do not write letters to the clerk asking for instructions on how to handle your case, since the clerk is prohibited from giving legal advice.

## Mailing Address:

United States District Court  
501 West 10th Street, Room 310  
Fort Worth, TX 76102-3673

Penney, Penney 0957003  
90 N. Lamar St.  
Fort Worth, TX 76104



UNITECOPES District Court  
501 West 10th Street, Room 310  
Fort Worth, TX 76102-3673



TARRANT COUNTY JAIL MAILROOM

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